

REMARKS

Election/Restriction

The Office Action acknowledges the election, in the prior response to the restriction requirement, of the Group II invention. However, no acknowledgement was provided in the Office Action of the amendment to the claims to bring them all within the scope of the elected Group II invention. The Office Action withdraws the amended claims from consideration. Applicant respectfully propose that this is an error and does not comply with any of the reasons for denying entry of amendments listed in MPEP §714.19. The amended claims were directed to the elected invention since they were amended to fall within the definition of the elected invention specified in the restriction requirement. Note that any species election requirements relating to the group of claims including 13 and its dependent claims are eliminated by the current amendment.

For the above reasons, Applicant respectfully requests that the amended claims be considered for patentability.

Declaration

The Office Action objected to the declaration for failing to comply with the requirements of 35 USC §120. A supplemental declaration conforming to MPEP §§ 602.01 and 602.02 is filed herewith. Applicant respectfully proposes that the defect is cured by the filing of the supplemental declaration.

Drawings

The Office Action objects to the drawings as failing to show various reference numerals in Figures 9, 14, 15, and 17. The drawings are also objected to for showing a reference numeral that is not identified in the specification. In response to the objection to the drawings, a full set of replacement drawings is included with the present response which contain the missing reference numerals.

The Office Action also objects to the drawings for failing to mention reference numeral 155 in Figs. 14 and 15. The first full paragraph of page 28 of the specification has been amended to correct this deficiency.

The Office Action also objects to the drawings as failing to show:

1. "the replacement fluid path terminating in multiple branches, each including a connector" (claim 9)
2. "the replacement fluid path including a separate replacement fluid set comprising multiple branches, each branch including a connector, and the replacement fluid path including a set connector" (claim 10)
3. "the sterilizing filter in the separate replacement fluid set" (claim 11)
4. "the sterilizing filter in the replacement fluid path upstream of the set connector" (claim 12)

As to the first recitation from claim 9, claim 9 has been amended so that its recitation is shown in Fig. 11.

As to the second recitation from claim 10, Fig. 21 shows a separate replacement fluid set 292 with branches each having a connector 294, and a set connector connectable to the cartridge connector shown at 174. The drawing and specification have been amended so that this connector 174A is identified by a reference numeral. No new matter is added because the nature and function of the connector are clear from the specification and drawings as a whole.

As to the third recitation from claim 11, Fig. 21 shows the recited filter 178 in the fluid set 292.

As to the fourth recitation from claim 12, the filter 178 is in a position upstream of the connector 174A since, as the specification makes clear, flow goes from the branches 294 to the connector 174A to the cartridge 18.

Specification

The Office Action admonishes Applicant to update the related applications referenced in the beginning of the specification. The specification has been amended at pages 58-59 to comply with the admonition.

The Office Action admonishes Applicant to capitalize the trademark “Amuchina” and use its generic designation. The specification has been amended at page 59 to comply with this admonition.

Claim Rejections - 35 USC §112

The Office Action states that there is insufficient antecedent basis for the recitation in claims 10-12. The specification and drawings clearly support the cited recitation as discussed below.

With regard to the recitation of claim 10, “includes a separate replacement fluid set comprising multiple branches, each branch including a connector to couple a source container of replacement fluid to the set, and wherein the replacement fluid path includes a set connector to releasably join the replacement fluid set to the replacement fluid path,” please see Fig. 21 and the attending discussion at pages 58 and 59. The specification and drawings clearly support the recitation of claim 10.

With regard to the recitation of claim 11, “the sterilizing filter is in the separate replacement set,” please see Fig. 21 and the attending discussion at pages 58 and 59. Thus, the specification and drawings clearly support the recitation of claim 11.

With regard to the recitation of claim 12, “the sterilizing filter is in the replacement fluid path upstream of the set connector,” please see Fig. 21 and the attending discussion at pages 58 and 59. Note that the discussion of Fig. 11 makes clear the direction of flow with

respect to the branching portion of the replacement fluid path. The discussion of Fig. 21 makes clear that the separate tubing set portion is an optional substitute for having integral branches in the tubing set as shown in Fig. 11. Thus, the specification and drawings clearly support the recitation of claim 12.

Claim Rejections - 35 USC §102

Claims 6-8 stand rejected as anticipated by Polaschegg (US Patent No. 4,702,829). Claim 6 has been amended to positively set forth structure that distinguishes Polaschegg. In particular, Polaschegg derives replacement fluid from dialysis fluid which contacts a filtrate side of a dialyzer. In contrast, claim 6, as amended, positively defines structure where replacement fluid comes from a source whose fluid cannot contact the filtrate side of the filter. Claim 6 therefore cannot be read on the device of Polaschegg. Since claims 7 and 8 depend from claim 6, they include the limitations thereof and the rejections of claims 6-8 are therefore overcome.

Also, claim 7 recites "wherein the source comprises at least one container holding replacement fluid." This limitation is not shown by Polaschegg and is not referred to by the Office Action. Applicant therefore submits claim 7 was improperly rejected.

Claim Rejections - 35 USC §103

Claims 9-12 stand rejected as obvious over Polaschegg (US Patent No. 4,702,829) in view of Jonkman (US Patent No. 5,423,769). The Office Action states that it would have

been obvious to modify the apparatus of claim 9 to add multiple branches as recited. Jonkman is related to cardioplegia and shows a manifold for flowing fluid to an arrested heart. The branches of the manifold are taught as motivated by a need to provide multiple separate flows from a common supply. The flow is in the one-to-many direction and selectable. The motivation and context of the diverging Jonkman manifold are completely unrelated to the converging branches of the claims. The Office Action also states that it is well-known to combine different fluids to make up balanced electrolyte, but none of the prior art cited supports doing this with a branching network. Applicant therefore respectfully proposes that a *prima facie* rejection has not been made and respectfully requests the rejection of claim 9 be withdrawn. Note that claim 9 is amended to address an objection to the drawings.

The arguments above apply with equal force to rejections of claims 10-12. Claim 10 again defines a converging manifold for connecting to replacement fluid containers providing a source flow. In addition, the manifold connector is supplied as a separate component which, although the manifold of Jonken is illustrated as a stand-alone component with connectors, there is no motivation provided in the office action for providing this feature in the context of the blood treatment system of Polascchegg so the lack of a *prima facie* obviousness rejection is evident for this reason as well. Applicant therefore respectfully requests the rejections of claims 10-12 be withdrawn.

Claims 29-36 stand rejected as obvious over Manica (US Patent No. 5,679,245) in view of Polaschegg (US Patent No. 4,702,829). Claim 29 is amended to distinguish the method of Polaschegg. Applicant respectfully proposes the amendment renders the rejection under 35 USC §103 moot. Claims 30-36 contain the limitations of claim 29 by dependency and their rejections should therefore be overcome by the amendment.

With regard to claim 31, Applicant notes that no basis for its rejection is given in the Office Action and therefore proposes that it was rejected in error. Applicant therefore requests the rejection thereof be withdrawn.

Allowable Subject Matter

Claim 32 has been amended to place it in independent form and therefore should be allowable.

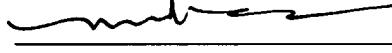
If the Examiner would like to discuss any of the issues in the present amendment or any relating to the application, the Examiner is invited to call Applicant's attorney at 202-778-1118.

Please charge or credit Deposit Account No. 16-2500 for all fees as needed.

Respectfully submitted,

PROSKAUER ROSE, LLP

Dated: 7/14/2003

By: 
Mark A. Catan
Reg. No. 38,720
Proskauer Rose, LLP
1585 Broadway
New York, NY 10036-8299